

W. H. Beatty - Plaintiff
H. L. Underwood
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 234 *L*

THE STATE OF COLORADO, APPELLANT,

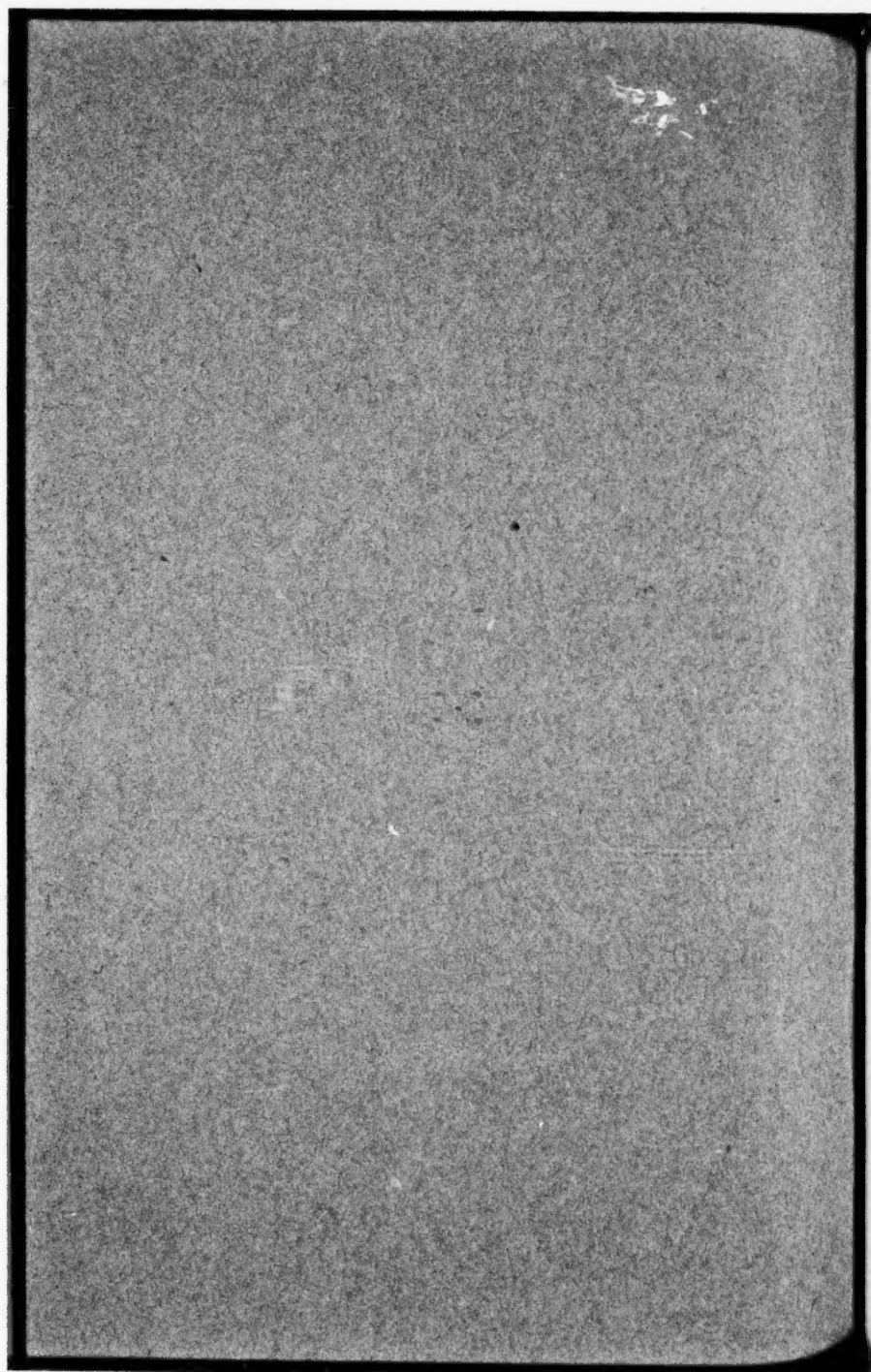
vs.

**ROGER W. TOLL, SUPERINTENDENT OF THE ROCKY
MOUNTAIN NATIONAL PARK**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLORADO**

FILED DECEMBER 5, 1923

(39,993)



(29,998)

SUPREME COURT OF THE UNITED STATES

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vs.

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[fol. 1] **IN UNITED STATES DISTRICT COURT**

[Caption omitted]

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT
OF COLORADO

STATE OF COLORADO, Complainant,

vs.

ROGER W. TOLL, Superintendent of the Rocky Mountain National
Park, Defendant

Bill in Equity

COMPLAINT—Filed August 5, 1922

To the Honorable J. Foster Symes, Judge of the United States Dis-
trict Court for the District of Colorado:

Your orator, the State of Colorado, brings this, its Bill of Com-
[fol. 2] plaint, against the defendant, Roger W. Toll, as superinten-
dent of The Rocky Mountain National Park, and avers:

I

The State of Colorado was admitted into the Union August 1,
1876, and then became and ever since said date has been and now is
a sovereign state; that within the boundaries of its own territory it
possesses in full the rights and prerogatives of sovereignty save as
to that portion of power delegated to the Federal Government by the
Constitution of the United States.

II

This bill is exhibited and these proceedings are had by direction
of Honorable Oliver H. Shoup, the duly elected, qualified, and act-
ing governor of the State of Colorado.

III

The defendant, Roger W. Toll, is the superintendent of The Rocky
Mountain National Park, hereinafter described, in control thereof
under the authority of the Secretary of the Interior of the United
States and limited in respect of the control of said park by the pro-
visions of the act establishing the said park as hereinafter at large
set forth.

IV

The Rocky Mountain National Park in the State of Colorado was established under and by virtue of the provisions of the Act of Congress of the United States of America of January 26, 1915, (38 Stat. at L. 798), entitled: "An Act to Establish the Rocky Mountain National Park in the State of Colorado, and for other purposes," and then comprised the tracts of land described in said Act of Congress. That certain tracts of land were added to and made a part of said Rocky Mountain National Park and all of the provisions of the said Act of Congress were made applicable to and extended over the land so added under the provisions of the Act of Congress of the United States of February 14, 1917, (39 Stat. at L. 916), entitled: "An Act to Add Certain Lands to the Rocky Mountain National Park."

V

The National Park Service was created and established by the Act of Congress of August 25, 1916, entitled: "An Act to Establish the National Park Service and for Other Purposes" (39 Stat. at L. 535), and thereby it was provided that the director of the National Park Service shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments, which are all under the jurisdiction of the Department of the Interior.

VI

By the creation of the Rocky Mountain National Park, under the aforesaid acts of Congress, an area of approximately four hundred square miles of territory, located in the counties of Grand, Larimer and Boulder of the State of Colorado, was dedicated and set apart as [fol. 4] a public park for the benefit and enjoyment of the people of the United States, and said tract does comprise and include by far the larger number of the points and regions of scenic interest and fame in the district, popularly known as the "Estes Park District," which is a region of great natural scenic attractions and beauties, and for many years prior to the creation of the said the Rocky Mountain National Park the same has been known thruout the United States as a place of desirable resort, and thruout the years the fame of the said district has constantly increased, and the number of people visiting the said district is now in excess of 200,000 per annum. Included within the Rocky Mountain National Park are numerous and extensive holdings of land in private ownership in addition to the lands of the United States, which became vested long prior to January 26, 1915.

The population center of the Estes Park region is the village of Estes Park, an incorporated town of the State of Colorado, located about one mile east of the east boundary of the said the Rocky Mountain National Park. On the east side of the village of Estes

Park a road runs south thru and skirting the park on the way to Denver by way of the towns of Ward and Lyons. The Lyons-Longmont road runs southeasterly connecting, thru the towns of Lyons, with the City of Longmont in the County of Boulder. The Thompson Canon road runs thru the canon of the Thompson River and connects with the City of Loveland and by a branch line with the City [fol. 5] of Fort Collins, both of which cities are located in the County of Larimer. The cities of Loveland, Longmont, and Fort Collins are located on the main north and south highway extending from the Wyoming state line thru Denver, Colorado Springs, and Pueblo to the New Mexico boundary. A road recently completed, called the "Fall River Road," follows the course of Fall River, crossing the Divide and joining the main road on the west side of the Continental Divide at the town of Grand Lake. Other roads connect Estes Park Village with Horseshoe Park, Moraine Park, Bartholf Park, and other valleys within the Rocky Mountain National Park. Still other roads provide means of access to numerous points of interest and attraction located within the park and in the vicinity thereof. Located along all of such roads within the park, and also in the district contiguous thereto on the east side thereof, are divers hotels affording accommodations to travelers and guests, built long prior to the passage of the act creating the park, and numerous cottages and dwellings erected and owned by citizens of the state and others on lands held in private ownership.

VII

All of the road, affording access to the Rocky Mountain National Park, and the lands held in private ownership located therein, were in existence and use long prior to January 26, 1915, and all thereof were built and maintained by the counties in which they are located or by such counties in conjunction with the State of Colorado. [fol. 6] All of the various roads, traversing the "Estes Park District," including the area now known as the Rocky Mountain National Park, were built and maintained by the aforesaid counties of Larimer, Boulder, and Grand and the State of Colorado under authority of the Act of 1866 (R. S. of the U. S. Sec. 2477), with respect to the establishment of the highways on the public domain, and they extend over and across lands of the United States and numerous tracts held in private ownership, and they afford the only means of access to such privately owned lands.

These highways and all thereof, upon their establishment and construction, came within the general jurisdiction of the State of Colorado, and the right to make use of said roads became vested in the general public under the sovereign control of your orator, which at all times was vested and which continues to be vested with the general police power and right to regulate and safeguard the use of such roads by the general public, and which power has never been surrendered nor ceded, and jurisdiction over the aforesaid highways continues and exists in like manner as with respect to all other highways within the state.

Almost the entire expenditure in the construction of the Fall River Road has been borne by the State of Colorado. This road was legally laid out and established by order of the Board of County Commissioners of Larimer County on the 9th day of August, 1913, [fol. 7] traversing lands of the United States and those of three private proprietors, and has been completed at an expenditure in excess of the sum of \$200,000.00. Since the creation of the Rocky Mountain National Park the Federal Government has expended thereon in making a survey for a proposed alternative line for the Fall River Road and incidental maintenance, not exceeding in total amount the sum of \$5,000.00. Since the creation of the said Rocky Mountain National Park the Congress of the United States has appropriated the sum of \$10,000.00 per annum for use of the Department of the Interior and the Director of the National Park Service in the maintenance and development of the Rocky Mountain National Park, practically all of which appropriation has been required and has been used for administrative purposes only, so that, since the creation of such park, practically no development has been made of such park by the Federal agencies mentioned. The entire economic development of the said Estes Park region, which comprises all of the land embraced in the Rocky Mountain National Park and a considerable area east thereof and south thereof, was brought about and was rendered possible by the expenditures made by the State of Colorado and by the said three counties of Larimer, Grand and Boulder in the construction of the main approach roads to Estes Park Village and by the secondary roads leading to points of interest, as hereinabove stated, and consequent thereupon many hundreds of [fol. 8] thousands of dollars have been invested by citizens of the State of Colorado in building permanent houses, summer cottages, and in the construction of hotels and other facilities for the comfort and enjoyment of travelers and guests in the "Estes Park District." These were built on lands held in private ownership. Most of the hotels in said district, both within and without the confines of the Rocky Mountain National Park, have customarily in the past afforded means of transportation to guests and others on sight-seeing trips and visits to other hotels and places, and only by reason of the affording of such service by said several hotels in the years past have the various points of scenic interest been made accessible to visitors, and the Estes Park region been made available to the people as a place of healthful resort and recreation.

VIII

That certain general rules and regulations for the government of the Rocky Mountain National Park, in effect March 1, 1919, were established and made public by the Secretary of the Interior, acting in purported compliance with the authority conferred by the said Acts of Congress approved January 26, 1915, August 25, 1916 and February 14, 1917, and said rules were again promulgated as in effect March 1, 1920, and were amended and promulgated as in effect February 4, 1921, and contained as approved February

[fol. 9] 21, 1922, to remain in force and effect until otherwise directed by the said Secretary of the Interior, of which said Rules and Regulations, Sections six and eighteen, as now effective, are as follows:

"6. Private Operations.—No person, firm or corporation shall reside permanently, engage in any business, or erect buildings in the park without permission in writing from the Director of the National Park Service, Washington, D. C. Applications for such permission may be addressed to the Director or to the superintendent of the park. Permission to operate a moving-picture camera must be secured from the superintendent of the park.

"18. Fines and Penalties.—Persons who render themselves obnoxious by disorderly conduct or bad behavior shall be subjected to the punishment hereinafter prescribed for violation of the foregoing regulations, or they may be summarily removed from the park by the superintendent and not allowed to return without permission in writing from the Director of the National Park Service or the superintendent of the park.

"Any person who violates any of the foregoing regulations shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceeding."

That certain special regulations concerning Automobiles and motor vehicles, were promulgated, effective March 1, 1920, and the same were thereafter amended and made effective as of February 4, 1921, and continued in force and effect, as approved February 21, 1921. Sections 2 and 16 of said Special Regulations are as follows:

"2. Automobiles.—The park is open to automobiles operated for pleasure, but not to those carrying passengers who are paying, [fol. 10] either directly or indirectly, for the use of machines. (Excepting, however, automobiles used by transportation lines operating under Government franchise).

"Careful driving is demanded of all persons using the roads, the Government is in no way responsible for any kind of accident.

"16. Fines and Penalties.—Any person who violates any of the foregoing regulations shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500.00 or imprisonment not exceeding 6 months, or both, and be adjudged to pay all costs of the proceeding, and such violation shall subject the offender to immediate ejection from the park. Persons ejected from the park will not be permitted to return without prior sanction in writing from the Director of the National Park Service or the superintendent of the Park."

The present Secretary of the Interior and the present Director of the National Park Service do each assert, and have at all times since the promulgation of the said rules numbered six and eighteen of the General Regulations and numbered two and sixteen of the

Automobiles Regulations, asserted that under the provisions of the said Acts of January 23, 1915, August 25, 1916, and February 14, 1917, they have full power and lawful authority to regulate the use of all highways located within the Rocky Mountain National Park to the exclusion of all authority possessed by the State of Colorado with respect to the control, management, maintenance, and supervision of the use of said roads, and acting under the directions of the said Secretary of the Interior and of the Director of the National Park Service the defendant herein has asserted, does now [fol. 11] assert, and will continue to assert the right and power to exclude any person or persons, except on conditions prescribed by the said Secretary of the Interior, and enforced by the defendant herein, and acting under such assumption of power and by the terms of Section 2 of the "Automobile Regulations" the defendant has refused permission to anyone operating automobiles for hire, with the exception that a permit for such operation has been issued to a certain corporation engaged in such transportation business, which permittee or licensee is denominated in said Rule 2 as a "franchise" holder.

That the said Secretary of the Interior and the Director of the National Park Service have on numerous occasions announced the purpose and policy of the Department not to grant to others any right of use of any of the roads located in the Rocky Mountain National Park in operating automobiles for hire therein, regardless of whether the applicant desires to engage in the public utility business of acting as a common carrier over fixed routes and on established schedules and rates, or seeks merely the right as hotel keeper or otherwise to carry passengers for hire under individual contracts of employment and under the direction in respect of routes of the passengers engaging such special service. Applications made to the Director of the National Park Service for permits to operate either a public utility business or an automobile service under special [fol. 12] hiring, have been refused or ignored by the Director of the National Park Service, with the knowledge, acquiescence and consent of the Secretary of the Interior of the United States.

Permits for the use in said park of automobiles or motor vehicles privately owned and operated and not for hire have not as yet been required, nor have fees been required for such use. Nevertheless, the Secretary of the Interior and the Director of the National Park Service, and each of them, have continuously asserted the right under the provisions of the several acts above referred to creating The Rocky Mountain National Park, to require permits as a condition to entering such park and to exact license fees for the use of privately owned automobiles and motor vehicles, and in the operation of other national parks have allowed those persons only who hold permits to enter such parks and have exacted license fees for such entrance.

Under the operation of the said rules and the directions otherwise received by the defendant from the said Secretary of the Interior and the Director of the National Park Service, the defendant has pre-

vented the transportation of persons or goods for hire from Estes Park village over and along the highways of complainant to privately owned lands belonging to citizens of the State of Colorado, located [fol. 13] within the confines of the Rocky Mountain National Park, and thereby has interfered with and impaired an essential right of said citizens in their ownerships of their lands, in violation of the provisions of Sections 2 and 3 of the Act of January 26, 1915. (38 Stat. L. 800.)

In the tourist season of 1922 the defendant, acting under the purported authority of the said statutes with respect to the creation of The Rocky Mountain National Park and rules and regulations hereinabove at large set forth, has excluded divers citizens of the State of Colorado from their lawful use of the public highways of the complainant, located within the confines of said Park and has threatened to and will continue to exclude citizens therefrom.

In the cities of Denver, Boulder, Loveland, and Fort Collins, which are the main starting points for travelers desiring to visit the "Estes Park District" are numerous individuals and companies engaged in the business of furnishing automobiles for hire, and many thousands of people annually, who visit this district prefer to engage the use of such automobiles, rather than those of the holder of the so-called "Government franchise." In the event a tourist engages the use of a car from other than the "franchisee," upon arrival at the Village of Estes Park, if he desires to travel within the confines of the Rocky Mountain National Park, he is [fol. 14] obliged to make use of the service afforded by the holder of the Government franchise, and thereupon pay for "waiting time" of the automobile, which he has engaged. Upon information and belief not less than ten thousand persons in the season of 1920 and a like number in the season of 1921, were, by reason of this application of the "Rules and Regulations" deterred and prevented from seeing any of the scenic attractions of the park.

And further, under the application and enforcement of the rules prescribed, in event a visitor to any one of the hotels mentioned, located within the park or in the Estes Park region, contiguous thereto, desires to engage an automobile for a sight-seeing trip, which includes conveyance over any road located within the confines of the National Park, he must engage an automobile from the company which is possessed of the "concession" to operate vehicles within the National Park, and such visitor is thereunder required to pay for such car from the time it leaves Estes Park Village to the place where the visitor is found, and thence returning, greatly to the impairment of the freest use of such Park, to which use the same was dedicated by the Acts of Congress herein mentioned.

Under the application of Rule 16 of the "Automobile Regulations" as prescribed by the Secretary of the Interior and enforced by the [fol. 15] defendant, citizens of the State of Colorado have not been permitted to return to the Rocky Mountain National Park and this without any precedent determination of guilt of such persons under

Rule 2, with respect to automobiles, and without any ejection from the park, as mentioned in said Rule 16.

Under the terms of Rule 18 of the "General Regulations" the defendant does assert that as superintendent of the said park, he may in his discretion remove from the Park any persons who render themselves "obnoxious by disorderly conduct or bad behavior," as determined by himself alone, and thereupon such persons may be banished from the said park. The predecessor of defendant in the office of Superintendent of the said Park has on divers occasions acted under such assertion of power.

IX

Your orator has heretofore asserted and exercised its general police power with respect to motor vehicles operating on the public roads of the State of Colorado. By Section 9 of Chapter 161, Session Laws of 1919, every chauffeur is required to obtain an annual license from the Secretary of the State of Colorado and pay a license fee, and the applicant is required to show that he is competent to operate a motor vehicle. The Secretary of State is further given authority to issue rules and regulations that may seem to him just and proper [fol. 16] in the issuance of a chauffeur's license. By Sec. 1 of said Act the term "chauffeur" is defined to mean "any person who operates or drives a motor vehicle for hire, directly or indirectly, except only dealers." By the provisions of said Sec. 1 the term "public highway" "shall include any public street, thoroughfare, roadway, alley, lane or bridge in any county or counties or city and county in the State of Colorado."

By Sec. 22 of the act provision is made for the revocation of license. By Sec. 24, penalties are imposed for the violation of the act.

By the Act approved Apr. 5, 1921, (Session Laws 1921, Chap. 141) entitled: "An Act Relating to Highways; To Regulate Its Expenditures, to Provide Rules and Regulations for the use of Public Highways and to Repeal all Acts and Parts of Acts in Conflict with this Act," your orator has prescribed a code of rules controlling the use of all the public highways in the State of Colorado, which code covers all regulations deemed necessary by your orator for the protection of life and property in the use of such highways and for the protection of such highways from injurious acts and *practises* in connection therewith.

X

Under the provisions of the aforesaid Act of Congress of January 26, 1915, creating the Rocky Mountain National Park, it is by Sec. [fol. 17] tion 3 provided that "no lands located within the park boundaries, now held in private, municipal, or state ownership, shall be affected by or subject to the provisions of this act." By Section 4 of said Act the Secretary of the Interior is authorized "to make and publish such reasonable rules and regulations not inconsistent

with the laws of the United States, as the said authority may deem necessary or proper for the care, protection, management, and improvement of the same, the said regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation of the natural conditions and scenic beauties thereof."

Notwithstanding that by the provisions of the said Act of January 26, 1915, no authority is conferred on the Secretary of the Interior to interfere with or restrict the common use and enjoyment of the public highways found within the said park, and under the provisions of the Tenth Amendment to the Constitution of the United States, such power could not be conferred, and that by the provisions of Secs. 2 and 3 of said Act the rights of persons holding real estate in private ownership within the park and the right of your orator with respect to such public highways are expressly excepted from the operation of the act, the Secretary of the Interior and the Director of the National Park Service assert, and will continue to assert, their [fol. 18] right, at their sole discretion, to exclude the public generally from such highways or to prescribe at their uncontrolled will the conditions under which the same may be used, and will continue to forbid all those operating automobiles for hire from utilizing any of such roads, whether such use shall be by persons or companies operating transportation lines as a public utility business or by persons operating such automobiles under special contracts of hire, and the defendant herein, on his own behalf as superintendent of The Rocky Mountain National Park, acting under the purported authority and direction of the Secretary of the Interior and the Director of the National Park Service, will likewise continue to forbid and exclude such use, greatly to the injury of complainant and all of those citizens in their right to make use of such roads under the regulations and limitations imposed by complainant in the exercise of its rightful jurisdiction and police control of such public roads, so laid out and established by the State, or by the Counties of Grand, Larimer and Boulder.

XI

Thereby the defendant has excluded the lawful authority entrusted to him with respect to the control of the Rocky Mountain National Park by the Acts of January 26, 1915, August 25, 1916, and February 14, 1917, and under such wrongful assumption of authority has sought to divest the vested rights of all of the citizens of the [fol. 19] State of Colorado in contravention of the Fifth Amendment to the Constitution of the United States, and has thereby violated and held for naught the provisions of the Tenth Amendment of the Constitution of the United States.

XII

The acts sanctioned and directed by the Secretary of the Interior and the Director of the National Park Service and committed by

the defendant are in derogation of and in conflict with the general rights of complainant, and the exertion of its general power of police regulation with respect to property located within the confines of the State of Colorado, and in the event the said usurpation of power should be permitted to go unchallenged complainant fears, and has good reason to fear, that such wrongful extension of Federal jurisdiction may be applied by the Secretary of Agriculture with respect to existing forest reserves, established in the State of Colorado, under the authority conferred upon that official in the acts providing for the establishment of such reservations, whereby the said Secretary is authorized to "make such rules and regulations and establish such service as will insure the objects of such reservation; namely, to regulate their occupancy and use and to preserve the forests thereon from destruction," (26 Stat. L. 1103; 30 Stat. L. 35; 33 Stat. L. 628), [fol. 20] the grant of power to regulate the use of forest reservations being in substance and in meaning identical with the grant of power to regulate the use of the Rocky Mountain National Park.

In the State of Colorado all of the main highways across the Rocky Mountains connecting the eastern and western portions of the state, traverse either forest reservations or the Rocky Mountain National Park.

Under such assertions of power complainant may be wholly divested of its authority in the premises and the right to use virtually all of its highways may be limited to those holding concessions or permits issued by or under the authority of the United States, and the wrongful assertion of Federal authority herein complained of is a matter of common and general interest to all of the citizens of the State.

Complainant is in duty bound to protect the vested rights of its citizens in the use of the public highways located anywhere within the confines of the state, and likewise to protect the rights of those of its citizens who are owners of land within the confines of the Rocky Mountain National Park, with respect to their means of ingress to and egress from such lands, and likewise in protecting the investment made by itself and the Counties of Larimer, Grand and Boulder in the construction of roads within the Rocky Mountain National Park, [fol. 21] and to the end that the purpose of the establishment of such roads shall not be defeated; and further, it is in duty bound to safeguard and protect its sovereign rights against the encroachments of usurpers of authority, and is remediless in the premises save by the interposition of a court of equity.

XIII

Wherefore, complainant prays the aid of this Honorable Court and asks that a temporary injunction issue herein on notice prohibiting the defendant, his agents, servants, and employees, from interfering with the rights of the citizens of the State of Colorado and others to make use of all of the public highways, as now laid out and established within the confines of the Rocky Mountain National Park; and that upon final hearing a decree may be entered deter-

mining that Rules 6 and 18 of "General Regulations" and Rules 2 and 16 of "Special Regulations" concerning the use of the said The Rocky Mountain National Park, are void insofar as the defendant seeks to apply them to the freest use of such highways by the public generally, and that it is determined that the defendant is without power or right under such regulations, or in any other wise, to prohibit the free use of such highways or to impose, as a condition of their use, the issuance of a permit or imposition of a license fee for so doing, and for permanent injunction in accordance with such [fol. 22] determination, and that it may have such other and further relief as the nature of the circumstances of this case may require and as to this Honorable Court shall seem meet.

Forasmuch, therefore, as the Complainant is without remedy in the premises, except in a court of equity, may it please your Honor to grant not only a writ of injunction, conformable to the prayer of this bill, but also a writ of subpoena directed to the defendant herein, to be served on him, commanding him on a day certain, therein to be named, and under a certain penalty to be and appear before this Court and to answer all and singular all the allegations of the foregoing bill and to abide by and perform such order and decree in the premises as may be awarded; hereby waiving answer under oath.

Victor E. Keyes, Attorney General of the State of Colorado
and Solicitor for Complainant. Paul W. Lee, Geo. H.
Shaw, of Counsel.

Jurat showing the foregoing was duly sworn to by Paul W. Lee omitted in printing.

[fol. 23] [File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES

SUMMONS AND SERVICE- Filed August 23, 1922

The President of the United States of America to Roger W. Toll,
Superintendent of the Rocky Mountain National Park, Greeting:

You and each of you are hereby commanded, that you appear before the Judge of the district court of the United States, for the district of Colorado, at the city and county of Denver, in said district, twenty days from the date hereof to answer the bill of complaint of The State of Colorado this day filed in the office of the clerk of [fol. 24] said court, in said city and county of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said—bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the Marshal of the district of Colorado to execute and make due return.

Witness the Honorable J. Foster Symes, Judge of the district court of the United States, for the district of Colorado, and the seal of the said district court, at the city and county of Denver aforesaid, this seventh day of August, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States, the 147th year.

Charles W. Bishop, Clerk, by — — —, Deputy Clerk.
(Seal of the District Court.)

MEMORANDUM

The above named defendant is hereby notified that unless he shall file his answer or other defense in the office of the clerk of said court, at the city and county of Denver aforesaid, on or before the twentieth day after service, excluding the day thereof, the bill of complaint may be taken pro confesso.

Charles W. Bishop, Clerk, by — — —, Deputy Clerk.
[fol. 25] Victor E. Keyes, Attorney General; Lee & Shaw, Solicitor-for Plaintiff.

UNITED STATES OF AMERICA,

District of Colorado, ss:

Denver, August 23, 1922.

I hereby certify and return that I served the within writ on the therein-named Roger W. Toll, Superintendent of The Rocky Mountain National Park, by mailing a true and correct copy thereof to him at Estes Park, in said District, on the 18th day of August, A. D. 1922, and receiving his written acceptance of service which is hereto attached and made a part hereof.

S. J. Burris, United States Marshal, by Harry A. McIntyre,
Chief Deputy.

Marshal's Fees: Service, \$2.00.

Endorsed: Received U. S. Marshal's Office, Aug. 10, 1922.

August 18, 1922.

United States Marshal, Denver, Colorado:

I hereby acknowledge receipt of Subpœna in Chancery, Court Docket No. 7389, service accepted, and will comply with the requirements as much so as if personal service had been made on me by you or one of your deputies.

Roger W. Toll, Superintendent of the Rocky Mountain National Park.

[fol. 26]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS—Filed September 7, 1922

Comes now the defendant in the above-entitled cause, and moves the Court to dismiss the bill filed herein upon the following grounds:

First. Because the United States is a necessary party to said cause.

Second. Because it appears from the allegations of said bill that the questions and rights involved in said cause involve a determination of the ownership of certain portions of The Rocky Mountain National Park in the State of Colorado, which belongs to the United States.

Third. Because that, as appears from the allegations contained in said bill, the real question in controversy in said cause, to-wit, the right of the defendant, as the Superintendent of The Rocky Mountain National Park, to enforce rules and regulations for the government of said Park, made by the Secretary of the Interior of the United States, depends for its determination upon the adjudication of the ownership and right of control of portions of the area of said Rocky Mountain National Park as between the alleged rights and claims of the State of Colorado, and the people of said State, and the United States.

Fourth. Because said bill seeks to enjoin the defendant as Superintendent of the Rocky Mountain National Park from the performance of duties enjoined upon him as an officer of the United States under the direction of the Director of the National Park Service and the Secretary of the Interior of the United States.

Fifth. Because said bill seeks to curtail and limit the right of the United States to control The Rocky Mountain National Park, which belongs to the United States, it appearing from the allegations of said bill that all of the said acts of the defendant complained of, were done and performed by him in his official character and capacity as Superintendent of said Rocky Mountain National Park, and under the provisions of the several regulations made by the Secretary of the Interior and acts of Congress referred to and set forth in the said bill.

Sixth. Because the relief sought under said bill is predicated and based upon rights and titles claimed by the State of Colorado, as against the title of the United States in and to The Rocky Mountain National Park, and the roads and highways traversing the same, and the right of control of said Park and highways by the United States.

Seventh. Because said bill does not state any matter of equity entitling the complainant to the relief prayed for, and no facts are stated therein entitling the complainant to any relief against the defendant.

Eighth. Because said bill is in divers other respects uncertain, informal and insufficient.

Wherefore the defendant prays the judgment of the court whether he shall answer further, and that he be dismissed with his costs.

Granby Hillyer, United States Attorney for the District of Colorado, for Defendant.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING CAUSE

At this day it is ordered by the court that this cause be and the same is hereby continued to the next term of the court.

[fol. 29] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AMENDMENT TO COMPLAINT—Filed July 23, 1923

Leave of court being first had, complainant files this as an amendment to the original bill of complaint, to be known as paragraph "XIIA":

"That the amount in controversy herein exceeds, exclusive of interest and costs, the sum or value of \$3,000.00."

Paul W. Lee, Geo. H. Shaw, Attorneys for Complainant.

IN UNITED STATES DISTRICT COURT

STIPULATION RE AMENDMENT TO COMPLAINT

It is stipulated and agreed by and between counsel for the respective parties hereto that the above amendment may be made and filed as of the 27th day of December, 1922.

Paul W. Lee, Geo. H. Shaw, Attorneys for Complainant.

Granby Hillyer, United States Attorney and Attorneys for Defendant.

[fol. 30]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

COMPLAINANT'S ELECTION TO STAND ON COMPLAINT—Filed September 10, 1923

The court having heretofore and on the 7th day of August, A. D. 1923, sustained a motion of the defendant to dismiss on the merits, now on this 31st day of August, A. D. 1923, the Complainant elects to stand on its complaint as filed.

Russell W. Fleming, Atty. Genl. of Colorado; Paul W. Lee, Geo. H. Shaw, Solicitors for Complainant.

[fol. 31]

IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed September 10, 1923

This cause having been heard upon the amended bill of complaint and defendant's motion to dismiss the same, and said motion to dismiss having been sustained, and the Complainant having elected to stand upon its pleadings, and the Court being fully advised in the premises,

It is by the Court ordered, adjudged and decreed: that the amended bill of complaint of the complainant be, and the same is, hereby dismissed for want of equity, at the cost of the complainant.

[File endorsement omitted.]

[fol. 32] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 10, 1923

Now comes the complainant in the above entitled matter and files the following assignment of error on which it will rely on its prosecution of an appeal in the above entitled cause from the decree made by this Honorable Court on the 10th day of September, A. D. 1923.

The Court erred in sustaining the motion to dismiss, interposed in behalf of the defendant and thereupon in entering decree of dismissal on the merits for the following reasons:

I

It appears from the allegations of the complaint that the State of Colorado has never ceded its sovereign rights, jurisdiction, or police power to the United States in respect of the Rocky Mountain National Park or the roads therein constructed by it or under its authority under the grant contained in the Act of 1866 (14 Stat. [fol. 33] 253), granting rights of way for highways on the public domain, and the determination of the court is therefore in conflict with Article 1, Section 8, Subdivision 17, of the Constitution of the United States.

II

The effect of the decree is to divest the power, authority, and sovereignty, held and reserved by the State of Colorado, in conflict with Article 10 of the amendments to the Constitution of the United States.

III

The effect of the decree is to divest the vested rights of citizens of the State of Colorado to travel over the highways of the state, the rights of way to which were granted by the United States under the Act of 1866 (14 Stat. 253), in violation of the Fifth Amendment to the Constitution of the United States.

IV

The decree of dismissal permits and authorizes an unwarrantable extension of the power and control vested in the Secretary of the Interior (and exercised by defendant under the direction of the said secretary) by the Acts of January 26, 1915, and February 14, 1917, (38 Stat. 798 and 39 Stat. 916), creating and extending the Rocky Mountain National Park; and the Act of August 25, 1916, (39 Stat. 535) establishing the National Park Service, which au-[fol. 34] thorizes the promulgation of reasonable rules and regulations applicable to the Rocky Mountain National Park; and Rules 2 and 16 of the Auto Regulations and Rules 6 and 18 of the General Rules and Regulations concerning national parks, as enforced by defendant, are unreasonable and arbitrary and in their terms and by their application create a monopoly and exclude from their operation all citizens of the state and others, save only the company conducting transportation lines under a government franchise.

Hereunder the decree so construes the aforesaid Federal Acts erroneously and in conflict with the language of the same, which requires the regulations to be reasonable and to be aimed at the freest use of the park.

V

By the decree the right of the defendant is upheld to exert executive authority over lands and highways within the Rocky Mountain

National Park, contrary to the provisions of the Act of January 26, 1915, (38 Stat. 798), establishing said park, which provides:

"That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect rights of any such claimant, locator, or entryman, to the fullest use and enjoyment of his land."

And also:

"That no lands located within the park boundaries, now held in private, municipal, or state ownership, shall be affected by or sub-[fol. 35] ject to the provisions of this act."

VI

The decree sanctions continued trespasses by the defendant and those acting under him, committed and to be committed on the highways of complainant, located within the Rocky Mountain National Park, and also the divestiture of claimant's title and the divestiture of the rights of all its citizens to enjoy the use of such highways, subject only to the lawful regulations enacted, adopted and to be adopted by claimant in the exercise of its prerogative as a sovereign state.

VII

The decree construes the Act of January 26, 1915, (38 Stat. 798) and upholds it to the extent of declaring it to be efficacious to authorize an interference with the vested rights of the owners of lands within the limits of the Rocky Mountain National Park, in respect of their use and enjoyment thereof, and their rights of ingress and egress thereto, and if such construction of said act is tenable the effect thereof would make it in conflict with the provisions of the Fifth Amendment to the Constitution of the United States, and thereupon it was the duty of the court to hold and determine that the said act so construed is void.

VIII

The decree sanctions an unwarranted application of and erroneously construes Rules 6 and 18 of the General Regulations governing [fol. 36] national parks, and Rules 2 and 16 of the Auto Regulations applicable to such parks, as promulgated by the Secretary of the Interior and enforced by defendant, so as to permit the defendant to exclude all persons, without regard to their fitness or financial reliability and without regard to compliance by them with any reasonable prerequisites required by defendant or his superiors, from operating automobiles for hire on the state highways within the Rocky Mountain National Park, except only the holder of the monopoly franchise, and thereby upholds the executive authority in the asser-

tion of power arbitrarily, whereas, the lawful test of the said rules is that they must be reasonable in their application.

IX

The decree upholds the defendant in the assertion and enforcement of general police power within the State of Colorado, not possessed by the government of the United States.

X

It does appear from the allegations of the complaint that the Secretary of the Interior has grossly exceeded the authority conferred on him by the acts in question (38 Stat. 798 and 39 Stat. 916), and that the defendant is excluding citizens from the park, under the direction of the Secretary of the Interior, in consummation of such usurpation of power.

[fol. 37]

XI

The rules of the Secretary of the Interior, governing parks, the enforcement of which by defendant is complained of, are not regulations, but are prohibitions of use and are by way of conferring an exclusive and special privilege and are in excess of and prohibited by the statutes conferring control on such secretary and on the defendant as superintendent of the Rocky Mountain National Park.

XII

The decree justifies the assertion of control by the government of the United States to the entire exclusion of the jurisdiction of complainant and conflicts with the assertion of complainant of its rightful police power, under the act approved Apr. 9, 1919, (S. L. Colo. 1919, page 533) and the Act approved April 5, 1921 (S. L. Colo. 1921, page 141).

Wherefore, appellant prays that said decree be reversed and that the District Court be directed to require defendant to answer the complaint.

Russell W. Fleming, Attorney General of the State of Colorado; Paul W. Lee, Geo. H. Shaw, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 38] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed September 13,
1923

To the Honorable J. Foster Symes, District Judge:

The above named State of Colorado, plaintiff, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 10th day of September, A. D. 1923, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed and the citation issue, as provided by law, and that a transcript of the proceedings and documents, on which said decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of such court in such case made and provided.

And your petitioner further prays that the proper order, relating to the necessary security to be required of it, be made.

Russell W. Fleming, Attorney General of the State of
[fols. 39 & 40] Colorado; Paul W. Lee, Geo. H. Shaw, Solicitors for
Plaintiff.

Appeal allowed on giving bond, as required by law, for the sum of Five Hundred Dollars (\$500.00).

J. Foster Symes, Judge of the District Court of the United States.

[File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

BOND ON APPEAL FOR \$500.00—Approved and filed September 13,
1923; omitted in printing

[fol. 41] [File endorsement omitted.]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To Roger W. Toll, superintendent of Rocky Mountain National Park, defendant, and to Granby Hillyer, attorney for defendant, and to the clerk of said court:

The clerk will prepare and transmit to the supreme court of the United States the following papers as and for the record on the writ of error.

- (1) Bill of complaint filed by the plaintiff the State of Colorado.
- (2) Subpœna with return.
- [fol. 42] (3) Amendment to original bill of complaint.
- (4) Motion to dismiss filed by defendant.
- (5) Ruling on Motion.
- (6) Election to stand on complaint.
- (7) Decree of Dismissal.
- (8) Assignment of errors.
- (9) Petition for Order allowing appeal and order allowing appeal.
- (10) Bond on Appeal.
- (11) Citation on Appeal.
- (12) Præcipe for Transcript.
- (13) Clerk's Certificate.

Dated this 13th day of September, 1923.

Russell W. Fleming, Attorney General; Paul W. Lee, Geo. H. Shaw, Attorneys for Plaintiff, the State of Colorado.

Received a copy of the foregoing præcipe this 13th day of September, 1923.

Granby Hillyer, United States Attorney for the District of Colorado, Attorney for Defendant, Roger W. Toll, Superintendent of Rocky Mountain National Park.

[fol. 43]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

CITATION—In usual form, showing service on Granby Hillyer; filed September 13, 1923; omitted in printing

[fol. 44]

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Charles W. Bishop, Clerk of the District Court of the United States for the District of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to forty-two (42) inclusive, to be a true, perfect and complete transcript and copy of the record and proceedings in accord with the præcipe therefor and of said præcipe, in a certain case then in said court pending, wherein The State of Colorado was complainant, and Roger W. Toll, Superintendent of The Rocky Mountain National Park, was defendant, as fully as the same still remain on file and of record in my office at Denver.

In testimony to the above and foregoing, I do hereunto sign my name and affix the seal of said court at Denver, in said District this Fifth day of October, A. D. 1923.

Charles W. Bishop, Clerk. (Seal of United States District Court, District of Colorado.)

Endorsed on cover: File No. 29,993. Colorado D. C. U. S. Term No. 683. The State of Colorado, appellant, vs. Roger W. Toll, superintendent of the Rocky Mountain National Park. Filed December 5, 1923. File No. 29,993.

(3161)